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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,086	03/03/2004	Challen W. Waychoff II	24379-0002-U1	4895

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MCNEES, WALLACE & NURICK LLC
100 PINE STREET
P.O. BOX 1166
HARRISBURG, PA 17108-1166

EXAMINER

MCCORKLE, MELISSA A

ART UNIT	PAPER NUMBER
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3763

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/792,086

Applicant(s)

WAYCHOFF, CHALLEN W.

Examiner

Melissa A. McCorkle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-8 and 10-13 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8, 10-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant is reminded that when an amendment is entered, he should point out where in the specification support exists for each amendment.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-3, 6-7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (6,761,702) in view of Staid et al (2006/0264808). Smith discloses applicant's basic inventive concept of a colon hydrotherapy device substantially as claimed with the exception of the nozzle with trapezoidal outlets in combination with a source of pressurized water. Staid shows the features of a nozzle with trapezoidal outlets (fig 5D) and a source of pressurized water (liquid jet or fluid jet, paragraph 0051) to be old in the medical devices art. It would have been obvious to

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one of ordinary skill in the art at the time of applicant's invention to put the nozzle of Staid onto Smith's device for the purpose of making the whole process of colon hydrotherapy faster (using pressurized water would loosen the waste faster than non-pressurized water.)

4. Smith discloses a colon hydrotherapy device including a substantially cylindrical housing 10 including a first chamber A and a second chamber B, the first chamber extending partially through the length of the housing [fig 2] and the second extending through the entire length of the housing [fig 2], and a dividing wall [the bottom wall of tube A] between the first and second chambers for completely separating the first and second chamber [the chambers never intermix] and a nozzle attached to the housing [claim 5], a water input line [col 3 line 65] and a drainage line [32.] Hose 26 facilitates insertion of the device and the shape corresponds to the interior of the housing.

5. Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Staid, as applied to claims 1-3, 6-7, 10 and 11 above, and further in view of Hawks (4,943,285). Smith in view of Staid discloses applicant's basic inventive concept of a colon hydrotherapy device substantially as claimed, with the exception of the insertion rod further comprising a rounded tip, a groove, a planar grasping member further including a stabilizing notch. Hawks shows this type of insertion rod column 2 lines 20-55) with these features to be old in the delivery devices art. It would have been obvious at the time of applicant's invention to one of ordinary skill in the art to use the rod of Hawks to facilitate better insertion.

Response to Arguments

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6. Applicant's arguments filed 11/21/2006 have been fully considered but they are not persuasive. As stated in the above rejection, Smith in view of Staid and further in view of Hawks disclose applicant's basic inventive concept. In regards to all of the claims, it is pointed out to applicant that claims are not limited to the manipulations of the recited steps (such as "formed within" etc) but only the structure implied by the steps. The patentability of a product does not depend on its method of production. It is also pointed out that although Examiner changed the Shu (6,918,517) reference, she still feels it is applicable prior art. The Staid better illustrated the nozzle function and shape.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa A. McCorkle whose telephone number is (571) 272-2773. The examiner can normally be reached on Monday - Friday, 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melissa A McCorkle
Examiner
Art Unit 3763

MAM
2/20/2007



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